

Resolution 19-284 Testimony

MISC. COM. 18

EMLA

From: CLK Council Info
Sent: Saturday, January 18, 2020 3:14 PM
Subject: Executive Matters & Legal Affairs Speaker Registration/Testimony

Speaker Registration/Testimony

Name David B. Monk
Phone 808-396-5959
Email dbmonk49@yahoo.com
Meeting Date 01-21-2020
Council/PH Committee ExecutiveMatters
Agenda Item Resolution 19-284
Your position on the matter Support
Representing Self
Organization
Do you wish to speak at the hearing? Yes

20 JAN 21 AM 7:54 CITY CLERK

Written
Testimony

My name is David B. Monk. I have served on the Ethics Commission since April 2017. Prior to that, my only encounter with Chair Victoria Marks was when she spoke at a public meeting as chair of the state redistricting commission in 2011 and I attended as an interested member of the public. We did not meet directly at that time. I have no personal or business relationship with Chair Marks apart from our service on the Ethics Commission.

When I was appointed to the Commission, I was aware from media reports of the controversy that had embroiled the Commission not long before, and I was apprehensive that it could continue to shadow the Commission's work. From the beginning, I have been reassured, in large measure thanks to the steady, capable leadership of Chair Marks, supported by a small but outstanding staff. She sets an example of dedicated, unbiased, apolitical service that I seek to emulate, and that is modeled as well by my fellow commissioners. She is unfailingly respectful and patient with members of the public who testify in person. Her deep expertise in the law and her judicial experience helpfully inform her conduct of the Commission's business.

Under her leadership, the Commission has labored to produce a strategic plan that will clearly define the Commission's purpose and priorities, and, I hope, justify appropriate resources in support, for the coming years.

I regard Chair Marks as an exemplary public servant who volunteers her time and energy in pursuit of the mission to fortify public confidence in the government of the City and County of Honolulu by providing ethics training to every elected and appointed official and

employee, and by fairly adjudicating reported violations. I strongly urge the Council to reappoint her.

Thank you for this opportunity to present my comments. If there are any questions, I will be glad to respond.

Testimony

Attachment

Accept Terms and 1
Agreement

IP: 192.168.200.67

From: CLK Council Info
Sent: Monday, January 20, 2020 12:46 PM
Subject: Executive Matters & Legal Affairs Speaker Registration/Testimony
Attachments: 20200120124627_Marks_test_1-21-20_R_19-284.docx

Speaker Registration/Testimony

Name	Charles Totto
Phone	8082248981
Email	chucktotto@yahoo.com
Meeting Date	01-21-2020
Council/PH Committee	ExecutiveMatters
Agenda Item	Reso 19-284
Your position on the matter	Oppose
Representing	Self
Organization	
Do you wish to speak at the hearing?	No
Written Testimony	see attached
Testimony Attachment	20200120124627_Marks_test_1-21-20_R_19-284.docx
Accept Terms and Agreement	1

IP: 192.168.200.67

Testimony of Charles Totto re Reso 19-284

Executive Matters and Legal Affairs Committee

Tuesday, January 21, 2020 at 1:00 p.m.

Dear Chair Menor and members of the Committee. I was the Executive Director and Legal Counsel for the Honolulu Ethics Commission (EC) from 2000 through July 2016. Then I worked as a special investigator for the Hawaii State Ethics Commission for several months until I retired from government.

I **oppose** the reappointment of Commissioner Victoria Marks because she has shown disqualifying poor judgment in her conduct on the EC.

Our government and community were recently rocked by the most insidious criminal and ethical misconduct by former Police Chief Louis Kealoha and former deputy prosecutor Katherine Kealoha. The repercussions of the scandal continue to effect law enforcement, the administration, the Council and the EC.

The purpose of the EC is to foster and maintain public confidence in the conduct of government officials. Sound leadership by the members of the EC is essential to that purpose. As a leader and guide for ethical conduct for all city employees and officers, each EC member should be held to a high standard of performance. I describe some areas where Chair Marks failed to meet that standard.

1. Chair Marks and the EC failed to investigate and resolve unsupported attacks against EC staff by the Kealohas. The EC remains vulnerable to similar assaults today.

In 2014 and 2015 the EC received about 20 complaints and concerns regarding the Kealohas' individual or collective potential violations of the city's ethics laws. The major focus was whether either or both Kealohas had misused their city authority in framing Katherine's uncle for theft of a mailbox and related issues. Much of the EC investigation occurred before the Federal Public Defender's office and the Department of Justice became involved.

To counter the rigorous staff investigations, in July 2015, the Kealohas filed the first of several written complaints with the EC against EC investigator, Letha DeCaires, and me. Among the outrageous accusations: we were engaged in a vendetta against the Kealohas and leaked confidential information to the media. Their serious charges had no supporting documentation or witness statements.

In 2019, the Kealohas were convicted and pled guilty to federal crimes related to the mailbox case and other charges. They were proven to have no credibility.

As for the EC investigations, the Kealohas wanted to stop Ms. DeCaires and me from doing our jobs. Unfortunately, this ploy worked. On a motion from Chair Marks, the EC barred me in late 2015 from being involved with any Kealoha case. But the EC did nothing to assess the credibility of the Kealohas' complaints. Ms. DeCaires and I asked for permission to rebut the

charges. Ms. DeCaires' written requests for a hearing under the EC Rules of Procedure were not responded to by the EC or Chair Marks. I was told that the EC was working on some process.

The result of the Kealohas complaints and Chair Marks and the EC disqualifying us without a hearing was to stop our investigations in their tracks -- an untenable action. Besides the past neglect, another critical point is that the EC has not yet determined how to avoid having any investigation hogtied by unsupported complaints against its staff. After over four years, the EC has done nothing to correct this.

I resigned from the EC in July 2016 and within a week the Kealohas sued the EC, Ms. DeCaires and me. That case was dismissed in December 2018.

2. EC formal advisory opinions dropped by 63% under Chair Marks.

After Commissioner Marks became Chair, the EC work output appears to have slipped precipitously. Public formal advisory opinions are a backbone of the communications between the EC, the public and City workforce. These describe the important issues examined, including potential law violations. In 2015 - 2019, under Chair Marks a total of 12 formal advisory opinions were rendered. In contrast, in the 5 years prior to her chairmanship (2010 - 2014), 32 formal opinions were published.

3. Chair Marks decided to restrict the staff from discovering the facts in alleged misconduct cases.

In 2016, Chair Marks ordered in a contested case that the EC staff could not subpoena documents or witnesses about an ethics violation after the staff had served a Notice of Alleged Violation on the public officer. As a practical matter, this meant that staff could not seek evidence to counter the officer's defenses -- not until the date of the contested case hearing. Neither the Hawaii State Ethics Commission nor the Office of Disciplinary Counsel (re lawyer misconduct) follow this practice because it is inefficient for both parties and could waste substantial time at the hearing. Presumably, the EC now applies this order in every contested case.

4. Have EC public meetings dropped by 50%?

The EC now only sets meetings every other month. Before Chair Marks' supervision, the meetings were at least every month. Fewer meetings means less work accomplished.

For these reasons, Commissioner Marks should not be reappointed.

Thank you for considering my comments.

From: CLK Council Info
Sent: Monday, January 20, 2020 6:40 PM
Subject: Executive Matters & Legal Affairs Speaker Registration/Testimony

Speaker Registration/Testimony

Name Letha Sundquist DeCaires
Phone 8087796427
Email lethadecaires@hotmail.com
Meeting Date 01-21-2020
Council/PH Committee ExecutiveMatters
Agenda Item Res.19-284
Your position on the matter Oppose
Representing Self
Organization
Do you wish to speak at the hearing? No

Written
Testimony

My name is Letha DeCaires. I retired in good standing from the Honolulu Police Department as a Captain. I have been the recipient of numerous awards for my law enforcement work throughout my career including a lifetime achievement award in 2010. I oppose the passing of Resolution 19-284.

Starting in 2013, I worked as a contract investigator for the Honolulu Ethics Commission (EC) under the supervision of Executive Director and Legal Counsel (EDLC) Chuck Totto.

It is public record that I investigated alleged ethics law violations of then police chief Louis Kealoha and his deputy prosecuting attorney wife Katherine Kealoha. To stop the investigations, the Kealoha's accused me and the EDLC in an ethics complaint of having a vendetta against them as well as leaking information to the press about confidential ethics investigations without naming one witness or offering any evidence.

The Ethics Commission is subject to the Rules of Procedure (ECRP). The purpose of the (ECRP) "shall be liberally construed to secure the just, swift, and inexpensive determination of every proceeding." Victoria Marks, as Chair of the Honolulu Ethics Commission failed to follow the procedures and as a result, the City and County of Honolulu has had, and will continue to pay in two ways, lack of public trust, as well as monetarily for the Kealoha investigations.

Due process is the cornerstone of our government. The Ethics Commission has due process. Every person who has a complaint against them as a right to appear before the Ethics

Commission. ECRP Rule 1.7 Right to Appear. I was denied this right.

Under Rule 5.4 Basis for Refusal to Entertain Complaint. "The commission may for good cause refuse to entertain a complaint. Without limiting the generality of the foregoing, the commission may refuse to entertain a complaint if the request is: (1) Speculative or purely hypothetical and does not involve an actual situation."

Therefore, without specific evidence the commission and Chair Marks, had the ability to decline the complaint, or at least ask for specific evidence. Chair Marks and the EC did not request additional information.

Chair Marks violated Rule 6.1 Investigative Hearings. "The commission, designee, legal counsel or a person with a matter pending before the commission may request an investigative hearing." I requested that a hearing be conducted promptly. I have never been contacted for any information in this matter even though in the minutes of the July 17, 2019, Ethics Commission meeting it states, "Chair Marks confirmed that the prosecution against the Kealohas and investigation of the Kealohas complaints against staff are ongoing." Again, I was denied this right. In addition, on the chronology of the events stated at that same meeting, it never noted I even requested a hearing in this matter.

The failure to follow the Ethics Commission Rules of Procedure by Chair Marks has had numerous consequences on the effectiveness of the Ethics Commission and my own work life.

The number and type of advisory opinions resulting from investigations is significantly lower under Chair Marks.

Supporting materials show in 2019 that the investigator's time is routinely over 50% for administrative needs, not investigations. Why do you need more investigators if the one you have is not being used for investigations?

In addition, the August 21, 2019 minutes stated. "Lately, most cases involved human resources and management issues that have been referred to department directors or up the chain of command to the Managing Director." The ethics commission under Chair Marks is not effectively supporting the mandate of the Honolulu Ethics Commission to investigate complaints.

Please do not renew Victoria Marks in her position as a commissioner with the Honolulu Ethics Commission. We need fresh eyes and positive action in our government. Public corruption is increasing and the trust of the people is decreasing. The Star Advertiser reported on 1-20-20 that State of Hawaii Attorney General Clare Connors is requesting an extra \$1million a year for pay increases....to pursue complex cases including public corruption and theft from state programs.

Why would anyone trust a commission that denied the basic due rights and rules to staff? If staff of the Honolulu Ethics Commission are not going to be afforded their rights, no one else will trust the process.

Again, with all respect, please do not renew Victoria Marks on the Ethics Commission. Thank her for her service, and find another citizen to serve and help renew the Honolulu Ethic Commission.

From: CLK Council Info
Sent: Monday, January 20, 2020 9:18 PM
Subject: Executive Matters & Legal Affairs Speaker Registration/Testimony
Attachments: 20200120211732_Reappointment_of_Judge_Marks.pdf

Speaker Registration/Testimony

Name	Barbara Polk
Phone	808-545-2445
Email	barbarapolk@hawaiiantel.net
Meeting Date	01-20-2020
Council/PH Committee	ExecutiveMatters
Agenda Item	2. RESOLUTION 19-284 – REAPPOINTMENT OF VICTORIA MARKS
Your position on the matter	Oppose
Representing	Self
Organization	
Do you wish to speak at the hearing?	<input checked="" type="checkbox"/> Yes
Written Testimony	
Testimony Attachment	20200120211732_Reappointment_of_Judge_Marks.pdf
Accept Terms and Agreement	1

20 JAN 21 PM 7:54 CITY CLERK

IP: 192.168.200.67

To: Honolulu County Council

December 3, 2019

FROM: Barbara Polk

RE: OPPOSITION TO THE REAPPOINTMENT OF VICTORIA MARKS TO THE HONOLULU ETHICS COMMISSION.

No one can doubt that Victoria Marks was a highly respected judge. However, those skills have not meshed well with her position on the Ethics Commission. She must not be reappointed.

The Ethics Commission is responsible "to improve and maintain public confidence in government officials and employees" (city charter). Even Ms. Marks' application for the Ethics Commission, makes clear that she sees her role as only an administrative one and does not acknowledge responsibility for maintaining ethical standards. She identified her prime duties as:

Preside over regular Commission meetings; set priorities for the Commission; assist, direct and guide staff with carrying out their duties.

As Chair of the Commission, she has used that position to limit the scope of the Ethics Commission by:

1. Proposing new rules that would eliminate anonymous and oral complaints, without recognition that whistleblowers are not well treated and many ethical violations would not come to light without anonymous complaints;
2. Proposing a new rule to not investigate any matter that is under investigation by any other entity. This provision ignores that ethics laws are not identical between county, state and federal jurisdictions and that the Commission has an independent responsibility to the people of Honolulu.
3. Apparently eliminating investigations into ethics complaints, since no investigations are reported for the past 4 years in the Mayor's FY2018 Department and Agency Reports. In addition, the change from monthly meetings to every other month suggests that the Commission has been relatively inactive in dealing with ethics matters.

My main concern, however, is that the favorable treatment of the Kealohas, by prohibiting the Commission staff from pursuing that investigation, and forcing out two of the most competent ethics investigators in the state, Ms. Marks has permanently undermined the ability of the Commission staff to do investigations. **Ms. Marks has set a precedent that allows any person under investigation by the Commission to derail or terminate that investigation by simply claiming harassment by the staff, as did Katheryn Kealoha.**

Whether her decision in the Kealoha case was to cover for members of the administration, including the Corporation Counsel and perhaps others above her, or whether it was a poorly thought out decision, Ms. Marks has violated the public trust. **To ensure the public's confidence in the integrity of the Ethics Commission in guarding ethics in city/county government, it is important that Virginia Marks not be reappointed to the Ethics Commission, and that other members who were on the Commission at the time of the decision to block the investigation of the Kealohas, be asked to resign, or not be reappointed when their term is up.**

Attached is Civil Beat Editorial Board Editorial: August 1, 2019
Honolulu Needs An Ethics Commission That Is Ethical.

Honolulu Needs An Ethics Commission That Is Ethical

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The commission mishandled its role in the Kealoha corruption case, demonstrating the need for a higher level of integrity and accountability than political appointees are providing.

By Civil Beat Editorial Board / August 1, 2019

A Civil Beat story this week examined in depressing detail how two investigators with the Honolulu Ethics Commission ended up not only losing their jobs but having their lives upended.

All because they dared to do their jobs.

Executive director Chuck Totto and investigator Letha DeCaires were targeted for defamation and destruction because they were investigating now-convicted Honolulu Police Chief Louis Kealoha and his wife, Katherine, a former city prosecutor and a current inmate at the Federal Detention Center.

We now know that Totto and DeCaires, like federal investigators, were on to what turned out to be the biggest public corruption scandal in Honolulu in recent memory.

The scandal continues, with more trials coming for the Kealohas and with top officials in the city's prosecutor and Corporation Counsel offices on leave because they are identified as possible targets of the feds.

Tuesday's story shows how officials in those agencies as well as in the Honolulu Police Department and the Caldwell administration actively worked to interfere with the work of Totto and DeCaires.

"There are no winners in this," DeCaires said. "It's sad that those people who were in such positions of power and influence could have fallen so low."

Totto worries that more corruption may be in Honolulu's future if changes aren't made.

He's right. The ethics commission is supposed to "improve and maintain public confidence in government officials and employees" as detailed in the city charter.

But the commission failed its mission in 2015 when it made decisions that led to the forced departure of Totto and DeCaires. Victoria Marks, the retired judge who heads the Ethics Commission, now says Totto and DeCaires were not forced out because the Kealohas had filed complaints against them. But there's ample reason to think otherwise, including Totto's own view on his resignation.

The commission should have supported its staff and let them do their work unheeded.

As Civil Beat reporter Nick Grube noted, the commission's reluctance to back its own staff and its blatant plan to steer them away from potentially politically treacherous waters began when Mayor Kirk Caldwell appointed three retired judges to the commission at nearly the same time — Marks, Rikki May Amano and Allene Suemori.

Now it's becoming clear that there needs to be change at the ethics commission, even major reform that could be put in place by the voters through a charter amendment.

or starters, Marks and the other ethics commissioners that were around at the time of the Totto shaming — Amano, Suemori and Michael Lilly — should step down. They were the ones who required Totto and his staff to record their daily activities on time sheets every six minutes. Caldwell has already made the

mistake of reappointing Amano to another term, an error he should not repeat when Marks' and Suemori's terms end in December.

While the mayor has denied being involved in meddling with the ethics commission, events strongly suggest otherwise. His own corporation counsel, Donna Leong, was deeply involved in directing how the commission staff could operate, even imposing restrictions on the commission's budget.

Which leads to another good idea: The commission should be moved out from under the city administration's control and set up as a separate, independent entity. Some have suggested establishing a local version of the inspector general's office to handle more complicated concerns about government practices.

Even before that could happen, the commission needs to make its work much more accessible. In recent years it has reduced its meetings from monthly to every other month and moved its office to a much less accessible location at Kapalama Hale, near Honolulu Community College. It took down its Facebook page. Those actions should be reversed.

The Kealoha corruption convictions and the continuing federal investigations into top-ranking city officials should have taught us an important lesson: Ethics and integrity are concepts to be highly valued and encouraged. Not short-changed for political expediency.

https://www.civilbeat.org/2019/08/honolulu-needs-an-ethics-commission-that-is-ethical/?utm_source=Civil%20Beat%20Master%20List&utm_campaign=8346e3e2cf-EMAIL_CAMPAIGN_2019_08_01_01_07&utm_medium=email&utm_term=0_51c2dd3cf3-8346e3e2cf-401679373&mc_cid=8346e3e2cf&mc_eid=78133117e7

From: CLK Council Info
Sent: Monday, January 20, 2020 11:16 PM
Subject: Executive Matters & Legal Affairs Speaker Registration/Testimony

Speaker Registration/Testimony

Name Sharlene Chun-Lum
Phone 8083542434
Email sharstocks@yahoo.com
Meeting Date 01-21-2020
Council/PH Committee ExecutiveMatters
Agenda Item Item 2, Resolution 19-284
Your position on the matter Oppose
Representing Self
Organization
Do you wish to speak at the hearing? No
Written Testimony There are questions regarding the actions of the Ethics committee, around the Kealoha investigation and the treatment of the former Director. It's time for a fresh start, one that allows for other new members to this board.
Testimony Attachment
Accept Terms and Agreement 1

IP: 192.168.200.67

TO: Council Committee on Executive Matters and Legal Affairs

FROM: Natalie Iwasa
808-395-3233

MEETING: Tuesday, January 21, 2020

SUBJECT: Resolution 19-284, Reappointment of Victoria Marks to Honolulu Ethics Commission - **Opposed**

Aloha Chair Menor and Committee Members,

Thank you for this opportunity to provide written testimony on the reappointment of Victoria Marks to the Honolulu Ethics Commission (EC). As I mentioned during the meeting, I oppose this resolution for several important reasons.

Reason for Stopping Kealoha Investigation

In July 2019, it was reported by several news outlets that the reason for stopping the Kealoha investigation was because of the lawsuits and complaints against the EC. There was no mention of resources, concern about duplicating efforts or getting in the way of other agencies. According to an AP story, Victoria Marks said the investigation was stopped "out of an abundance of caution because the Kealohas had filed lawsuits as well as complaints." ¹

Decrease in and De-emphasis of Investigations and Complaints

The EC's draft strategic plan, which was discussed at its June 21, 2017, included consideration of a policy that the commission would not initiate or proceed with its own investigation if other official investigations were being conducted. "Official investigations" was not defined. Several members of the public have expressed concerns about this, but it was still included in the final plan that was sent to various agencies, including the Honolulu City Council, on September 23, 2019. Just because another agency is investigating a complaint does not mean it would be in the best interest of the complainant or the public to hold off on its own investigation.

In December 2018 Civil Beat reported there were 86 new investigations during Jan Yamane's first year as Executive Director/Legal Counsel (ED/LC) and only 58 her second. This is down from an average of 100 per year during the four years prior to Chuck Totto's departure. ²

The number of advisory opinions has also decreased. During the past four years, 10 opinions were published. During the four years prior to that, 21 opinions were published, including one amended opinion. Even considering that 2016 was the year of transition in the ED/LC position, there is still a significant decrease in published opinions. ³

Staffing and Budget

The EC has been understaffed and underfunded for years. For example, in the city's departmental annual reports for fiscal years 2013 through 2017,⁴ outstanding investigations were noted as 35, 39, 57, 50 and 65, respectively for each year. This information was regularly shared with the Council.

Note that different reporting categories were used for the 2018 and 2019 annual reports, and outstanding investigations were not included. However, the continued need for an additional investigator is evident in staff reporting. From 2017 through 2019, the EC investigator has consistently reported that at least 30% of time is spent on administrative tasks. Some months the amount is well above 50%. (Reports showing percentage of hours spent are available in the EC's meeting materials posted on its website.)

While the need for an additional investigator has been clear for at least the last seven years, no requests for funding for such a position has been made in the past three years. The March 2017 and 2018 EC budget presentations included no requests for additional staff. According to the EC's March 2019 budget presentation, a request was made to create and fund a new Assistant Executive Director, but there was no request for an investigator or an additional clerk who would be able to help with administrative tasks. The last request for an additional investigator was made in March 2016 while Chuck Totto was still the ED/LC.

Anonymous Complaints and Tip Hotline

In its 2018 *Report to the Nations, Government Edition*, the Association of Certified Fraud Examiners noted hotlines, at 45%, are the source most often used for initial detection of frauds. Of those, 54% came from employees while 17% were anonymous.

The draft of the EC's strategic plan, which was discussed by the EC at its June 21, 2017, meeting, included as part of its objectives to change the definition of "complaint" and consider disallowance of anonymous complaints. Despite concerns raised by members of the public, the final plan still includes that. During the October 16, 2019, EC meeting, however, it was noted by Commissioner Lilly that "some of our most significant investigations were from anonymous sources."

As for a 24/7 hotline, there was an update during the October 2019 meeting from one of the staff that the EC's "hands were tied" because three other city departments have control of the employee-only integrity hotline. There was no mention of requests to expand the hotline or for the EC to request funding for its own hotline.

Other Concerns

As I mentioned during the meeting, the EC's Facebook page was deleted in June 2018. This page was part of the public record and should not have been deleted.

I share others' concerns about the change to have regular EC meetings every other month. With backlogs as significant as they have been for many years, the EC should be meeting more regularly.

The lack of a clear process by which future complaints against EC staff will be handled sends the message to others who are upset about being investigated that they may file counter complaints regardless of merit. When someone is accused of wrongdoing, at a minimum, they should have an opportunity to give their side of the story. I am not aware that any such policy has been put into place.

Successful ethics programs are well rounded and balanced between education and enforcement, which includes consequences. While I support ethics education and training, it's important to hold ethics violators accountable. Investigations and evidence of enforcement are an important part of that.

When someone is not doing a good job, it's time to replace that person. Based on my experience with the EC, Ms. Marks should not be reappointed.

Before you vote, please read the testimonies from Letha DeCaires and Chuck Totto, then vote "no" on this resolution.

¹ *Honolulu ethics chief: Panel blocked his Keoloha inquiry*, AP, July 19, 2019.
<https://apnews.com/080aa0f5d930499791e1bfe2f228a7ce>

² *City Ethics Commission Is Investigating Far Fewer Cases Than 2 Years Ago*, Civil Beat, December 6, 2018.
<https://www.civilbeat.org/2018/12/city-ethics-commission-is-investigating-far-fewer-cases-than-2-years-ago/>

³ Advisory Opinions posted at <https://www.honolulu.gov/ethics/opinions.html>.

⁴ Honolulu Annual Reports posted at <http://www.honolulu.gov/mayor/reports.html>.